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17050  
RECORDATION NO. \_\_\_\_\_ FILED 1423

October 4, 1990

OCT 4 1990-9 40 AM  
INTERSTATE COMMERCE COMMISSION

OCT 11 9 35 AM '90

Ms. Mildred Lee  
Recordations Unit  
Interstate Commerce Commission  
12th & Constitution Avenue, N.W.  
Washington, D.C. 20423

Dear Ms. Lee:

Enclosed is a Bailment Agreement dated August 24, 1990, between the following parties:

Bailor: General Motors Corporation,  
Electro-Motive Division  
LaGrange, IL 60525

Bailee: Kansas City Southern Railway  
Kansas City, MO

The equipment involved in this transaction is as follows:

Equipment: 12, SD60 3800 HP Locomotives  
KCS 724-735

Please file this agreement as a primary document. The filing fee of \$15 is enclosed. Thank you.

Sincerely,

*Mary A Oster*

Mary Ann Oster  
Research Consultant

Enclosures

*Patricia J. Ward*  
*Quincy*

17050  
REGISTRATION NO. FILED 1425

OCT 4 1990 - 9 40 AM

## INTERSTATE COMMERCE COMMISSION

THIS AGREEMENT, dated as of August 24, 1990, between GENERAL MOTORS CORPORATION (ELECTRO-MOTIVE DIVISION), a Delaware corporation (Bailor), THE KANSAS CITY SOUTHERN RAILWAY COMPANY (KCS), a Missouri corporation (KCS):

WITNESSETH:

WHEREAS, Bailor and KCS entered into a Purchase Order dated October 27, 1989 (Purchase Agreement) incorporated herein and hereby made part hereof, pursuant to which the Bailor has agreed to construct and to deliver to KCS at Kansas City, Missouri and KCS agreed to accept and pay for, twelve (12) SD60 3,800 H.P. diesel electric locomotives, bearing road numbers KCS 724 to KCS 735, inclusive, (the Locomotives).

WHEREAS, KCS desires to have temporary custody, possession and use of each of the Locomotives as soon as they are available for delivery, solely as a bailee, and the Bailor is willing to grant such temporary custody, possession and use to KCS upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the premises, Bailor hereby delivers to KCS and KCS accepts from the Bailor the Locomotives as of the date each of them is delivered at Kansas City, Missouri until payment in full is effected pursuant to the Purchase Agreement for all of the Locomotives upon the terms and conditions detailed below.

1. Upon delivery of each Locomotive, a KCS representative shall execute a certificate of acceptance acknowledging the receipt thereof hereunder. Title to each Locomotive shall remain in the Bailor and KCS's right and interests therein are and shall be solely that of possession, custody and use as bailee under this Agreement. Transfer of title shall be affected only at the time of delivery of bills of sale for the Locomotives. KCS shall do such acts as may be required by law, or reasonably requested by the Bailor, for the protection of the Bailor's title to and interest in the Locomotives, including, but not limited to filing with the Interstate Commerce Commission.

2. KCS shall pay or cause to be paid to the Bailor the purchase price of the Locomotives stated in the Purchase Agreement (the "Purchase Price") upon its receipt and acceptance of the tenth Locomotive hereunder. In the event KCS fails to make such payment, it shall pay interim per diem rent equal to the Purchase Price multiplied by the Prime Rate of Interest published in the Wall Street Journal divided by 365 for all twelve (12) Locomotives. Such interim rent shall be paid for each day during the period beginning on the date payment is due hereunder until the date payment is made inclusive. In no event, however, may KCS retain use of the Locomotives beyond ten (10) days after delivery and acceptance of the twelfth Locomotive to be delivered hereunder.

3. KCS agrees that it (a) shall permit no liens of any kind to attach to the Locomotives and (b) will indemnify and save harmless the Bailor from any and all claims, expenses or liabilities of whatsoever kind, including any liability for personal injury or property damage and any and all taxes, fines,

charges and penalties that may accrue or be assessed or imposed upon the Locomotives or the Bailor as a result of the Bailor's ownership or because of the use, operation, management or handling of the Locomotives by KCS during the term of this Agreement. KCS obligations contained in this paragraph shall survive the termination of this Agreement.

4. KCS will, at its own expense, keep and maintain the Locomotives in good Order and running condition and shall, at its option, replace or repair any component or part of any Locomotive damaged or destroyed by any cause during the term of this Agreement or promptly pay to the Bailor the Purchase Price of any Locomotive which may in the opinion of Bailee be damaged beyond economic repair or destroyed by any cause during the term of this Agreement.

5. In the event KCS fails to pay the Purchase Price plus any interim rent due hereunder within ten (10) days after delivery and acceptance of the last Locomotive to be delivered hereunder, then Bailor may, by its agents, enter upon the premises of KCS or other premises where the Locomotives may be and take possession of all or any such Locomotives and thenceforth hold, possess and enjoy the same free from any right of KCS, or its successors or assigns, to use the Locomotives for any purposes whatsoever; and to sell and deliver the Locomotives to others upon such terms as Bailor may see fit in its sole discretion, it being understood and agreed that KCS shall be liable to Bailor for any losses which Bailor may suffer as a direct result of KCS's failure to pay the Purchase Price, which may include: expenses of recovering, storing and safeguarding the Locomotives; cost of remarketing the Locomotives and reduction in sale value below the Purchase Price.

6. KCS represents and warrants that:

a. The execution and delivery of this agreement is within its corporate authority, has been authorized by proper corporate proceedings and will not contravene any provision of its character or by-laws;

b. The rights of Bailor as herein set forth and the title of Bailor to the Locomotives are senior to the lien of any mortgage, security agreement or other instrument binding upon KCS:

c. KCS will not use any lubrication material which is contaminated with any hazardous substance and that it will conform with any Association of American Railroad recommended procedure or practice regarding the use of lubrication materials.

7. This Agreement will terminate, in any case, upon receipt by Bailor of payment in full for the Locomotives under the Purchase Agreement.

THIS AGREEMENT shall be governed by and construed in accordance with the laws of the State of Missouri.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY

By W. N. Drans, Jr.

ATTEST:

\_\_\_\_\_

GENERAL MOTORS LOCOMOTIVE GROUP  
ELECTRO-MOTIVE DIVISION

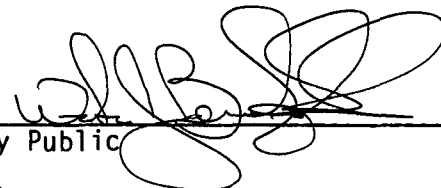
By John W. Jurell

ATTEST:

Paul

STATE OF MISSOURI )  
CITY OF KANSAS CITY ) ss.

On this 14 day of August, 1990, before me personally appeared William N. DERAMUS IV to me personally known, who, being by me duly sworn, says that he is President and CEO of THE KANSAS CITY SOUTHERN RAILWAY COMPANY, that said instrument was executed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

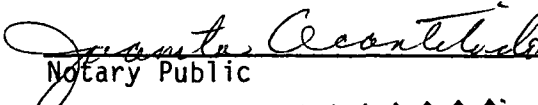
  
\_\_\_\_\_  
Notary Public

My Commission Expires:

WANDA L. BENEFIEL  
Notary Public-State of Missouri  
Commissioned in Clay County  
My Commission Expires May 14, 1994

STATE OF ILLINOIS )  
CITY OF LAGRANGE ) ss.

On this 24<sup>th</sup> day of Aug, 1990, before me personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, says that he is \_\_\_\_\_ of GENERAL MOTORS LOCOMOTIVE GROUP (ELECTRO-MOTIVE DIVISION), that said instrument was executed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

  
\_\_\_\_\_  
Notary Public

My Commission Expires:

